Mr. Justice DAVIS delivered the opinion of the court.

The only way in which the property of this company could be reached for taxation at all was after the limitation of the fifteen years had expired. The legislature was then at liberty to tax the individual shares of the stockholders, whenever their annual profits exceeded 8 per cent. When a statute limits a thing to be done in a particular mode, it includes a negative of any other mode. It was the manifest object of the legislation which incorporated this company to invite the investment of capital in the enterprise of building this road; and no means better adapted for the purpose could have been devised, short of total immunity from taxation. As long as the capital was unproductive it contributed nothing to the support of the government, and even after it became remunerative, its contribution was fixed by the terms of the charter, and could not, in any event, exceed twenty-five cents on the share of stock. The impolicy of this legislation is apparent, but there is no relief to the State, for the rights secured by the contract are protected from invasion by the Constitution of the United States.

As the pleadings show that the annual profits on the shares of stock have never reached 8 per cent., it follows that they were not subject to any public charge or tax.

JUDGMENT REVERSED, and the cause remanded for further proceedings,

IN CONFORMITY WITH THIS OPINION.

RAILWAY COMPANY v. WHITTON'S ADMINISTRATOR.

1. Although a corporation, being an artificial body created by legislative power, is not a citizen, within several provisions of the Constitution; yet where rights of action are to be enforced by or against a corporation, it will be considered as a citizen of the State where it was created within the clause extending the judicial power of the United States to controversies between citizens of different States.
2. Where a corporation is created by the laws of a State, it is, in suit brought in a Federal court in that State, to be considered as a citizen of such State, whatever its status or citizenship may be elsewhere by the legislation of other States.

Syllabus.

3. A statute of Wisconsin provides that "whenever the death of a person shall be caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured; *provided, that such action shall be brought for a death caused in this State, and in some court established by the constitution and laws of the same.*" *Held*, that the proviso requiring the action to be brought in a court of the State does not prevent a non-resident plaintiff from removing the action, under the act of Congress of March 2d, 1867, to a Federal court and maintaining it there.
4. Whenever a general rule as to property or personal rights, or injuries to either, is established by State legislation, its enforcement by a Federal court in a case between proper parties is a matter of course, and the jurisdiction of the court in such case is not subject to State limitation.
5. The act of March 2d, 1867, amending the act of July 27th, 1866, "for the removal of causes in certain cases from State courts," by which amendatory act it is provided that in suits then pending, or which might be subsequently brought in a State court, "in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, and the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs," the suit may be removed to a Federal court upon petition of the non-resident party, whether plaintiff or defendant, at any time before final hearing or trial, upon making and filing in the State court "an affidavit stating that he has reason to and does believe that, from prejudice or local influence, he will not be able to obtain justice in such State court," is constitutional and valid.
6. The judicial power of the United States extending by the Constitution to controversies between citizens of different States, as well as to cases arising under the Constitution, treaties, and laws of the United States, the manner and conditions upon which that power shall be exercised, except as the original or appellate character of the jurisdiction is specially designated in the Constitution, are mere matters of legislative discretion.
7. It is not error for a court to refuse to give an extended series of instructions, though some of them may be correct in the propositions of law which they present, if the law arising upon the evidence is given by the court with such fulness as to guide correctly the jury in its findings; nor is a judgment to be set aside because the charge of the court may be open to some verbal criticisms in particulars considered apart by themselves, which could not when taken with the rest of the charge have misled a jury of ordinary intelligence.
8. The respective obligations of railway companies running locomotives through cities, and of persons crossing the tracks in such places.

Statement of the case.

ERROR to the Circuit Court for the Eastern District of Wisconsin.

Henry Whitton, as administrator of the estate of his wife in Wisconsin, under letters of administration granted in that State, brought suit in 1866 in one of the *State courts of Wisconsin* to recover damages for the death of his wife; the same having been caused, as he alleged, by the carelessness and culpable mismanagement of the Chicago and Northwestern Railway Company.

The action was founded on a statute of Wisconsin, which provides that "whenever the death of a person shall be caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable, if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this State, and, *in some court established by the constitution and laws of the same.*"

The statute also provides that "every such action shall be brought by and in the name of the personal representative of such deceased person, and the amount recovered shall belong and be paid over to the husband or widow of such deceased person, if such relative survive him or her," and that "the jury may give such damages, not exceeding five thousand dollars, as they shall deem fair and just, in reference to the pecuniary injury resulting from such death, to the relatives of the deceased."

Whilst the cause was pending in the State court, where it was originally brought, and after issue joined, Congress passed an act of March 2d, 1867,* amending the act of July 27th, 1866, "for the removal of causes in certain cases from State courts." By this amendatory act it is provided that in suits then pending, or which might be subsequently brought

* 14 Stat. at Large, 558.

in a State court, "in which there is a controversy between a citizen of the State in which the suit is brought and a citizen of another State, and the matter in dispute exceeds the sum of $500, exclusive of costs, such citizen of another State, whether he be plaintiff or defendant, if he will make and file in such State court an affidavit stating that he has reason to, and does believe that, from prejudice or local influence, he will not be able to obtain justice in such State court, may, at any time before the final hearing or trial of the suit, file a petition in such State court," and have the suit removed to a Federal court.

Under this act the plaintiff, in September, 1868, petitioned the State court for the removal of the action to the Circuit Court of the United States for the District of Wisconsin, stating, in his petition, that he was at the time, and had been for the three previous years, a resident and citizen of the State of Illinois; that the defendant was a corporation organized under the laws of Wisconsin, and that the matter in dispute exceeded the sum of $500, exclusive of costs. The plaintiff also offered with his petition good and sufficient surety as required by the act of Congress, for entering in the Circuit Court at its next session, copies of all process, pleadings, depositions, testimony, and other proceedings in the action, and for doing such other appropriate acts as by the laws of the United States are required for the removal of a suit into the United States court. Accompanying this petition was the affidavit of the plaintiff that he had reasons to believe, and did believe, "that, from prejudice and also from local influence," he would not be able to obtain justice in the State court.

The petition was resisted upon affidavits that the defendant was a corporation created and existing under the laws of the States of Illinois, Wisconsin, and Michigan; that its line of railway was located and operated, in part in each of these States, and was thus located and operated at the commencement of the action; that its entire line of railway was managed and controlled by the defendant as a single corporation; that all its powers and franchises were exer-

cised and its affairs managed and controlled by one board of directors and officers; that its principal office and place of business was at the city of Chicago, in the State of Illinois, and that there was no office for the control or management of the general business and affairs of the corporation in Wisconsin.

The local State court granted the petition, and ordered the removal of the action to the Federal court, but directed a stay of proceedings upon its order to enable the defendant to appeal from it to the Supreme Court of the State, and provided that, in case such appeal should be taken, all proceedings should be stayed until its determination.

The appeal was taken, and the order of removal was reversed by the Supreme Court. The reversal, as appears from the opinion of the court, was placed on the ground that the plaintiff, having the right originally to pursue his remedy either in a Federal or State court, had made his election of the State court, and had thus waived the right to demand the judgment of the Federal court upon the matter in controversy.

The plaintiff, however, did not regard the stay of proceedings or delay his action until the disposition of the appeal, but procured copies of the papers in the cause from the State court and filed them in the Circuit Court of the United States. The latter court thereupon took jurisdiction of the case and a new declaration was filed by the plaintiff.

In the meantime the defendant, upon affidavit of the stay upon the order of removal made by the State court and of the appeal from such order, moved the Circuit Court that the cause be dismissed from its calendar and the pleadings and proceedings be stricken from its files. But this motion the court denied, and thereupon the defendant filed a plea in abatement, setting forth an objection to the jurisdiction of the Federal court, founded upon the proviso to the statute of Wisconsin requiring the action for damages resulting from the death of a party to be brought in some court established by the constitution and laws of that State. A de-

murrer to this plea being sustained, the defendant filed a plea of the general issue. Subsequently, upon the reversal of the order of removal by the Supreme Court of the State, the defendant moved the Circuit Court to remand the cause to the State court, but the Circuit Court refused to relinquish its jurisdiction, and the motion was denied.

The case having accordingly come up for trial, the facts appeared to be these: The deceased died in December, 1864, from injuries received from a locomotive of the railroad company, defendant in the case, whilst she was endeavoring to cross its railway track, in Academy Street, in Janesville, Wisconsin. This street ran nearly north and south, and was crossed by four parallel railway tracks, lying near each other and running in a direction from northeast to southwest. Two of these—those on the northerly side—belonged to the Milwaukee and Prairie du Chien Railway Company; and the other two belonged to the defendant, the Chicago and Northwestern Railway Company. One Mrs. Woodward and a Mr. Rice were standing, together with Mrs. Whitton (the deceased), just previous to the accident, upon the crosswalk on the northerly side of the tracks, waiting for a freight train of the Milwaukee and Prairie du Chien Railway, then in motion, to pass eastwards, so that they might proceed down the street and over the tracks. The weather was at the time extremely cold, and a strong wind was blowing up the tracks from the southwest, and snow was falling. As soon as the freight train had passed, Rice crossed the tracks, moving at a brisk rate. In crossing, he states that he took a look at the tracks and that he neither saw nor heard any engine on the tracks of the defendant. Almost immediately after getting across, and before he had gone many steps, he heard a scream, and on turning around saw that the women —Mrs. Whitton and Mrs. Woodward—had been knocked down by a locomotive of the defendant. This locomotive was at the time backing down in a westerly direction—opposite to that taken by the freight train which had just passed—the tender coming first, then the engine drawing a single freight car. The persons in this locomotive did not

appear to be aware of the injuries they had occasioned, and the locomotive continued on its course until their attention was called to the disaster by the efforts of Rice, when it was stopped. No person saw the locomotive strike the deceased, or noticed her conduct after Rice left her and started to cross the tracks. The injuries which both of the women received resulted in their death. Mrs. Woodward died soon afterwards, and Mrs. Whitton after lingering some weeks. There was much conflict of evidence upon the point whether the bell was rung on the locomotive as it backed down the track and approached Academy Street, so as to give warning to persons who might be on that street wishing to cross, and was kept ringing until the locomotive and tender crossed the street. Rice testified that he did not hear any bell or signal from this train, but that the bell of the freight train which had passed was ringing.

Among other witnesses, the surgeon who attended Mrs. Whitton was examined, and of him the question was asked whether she was pregnant at the time of the accident. To this question objection was taken by the defendants as improper and immaterial; but the objection was overruled and exception taken. The witness answered that she was. The evidence being closed, the defendant asked nineteen different instructions, which the court refused to give, except in so far as they were contained in the instructions whose substance is hereinafter mentioned and given of its own accord. Among the nineteen were these two:

"Under ordinary circumstances a person possessing the use of those faculties should use both eyes and ears to avoid injury in crossing a railway track; and if in this case the wind and noise of the freight train tended to prevent Mrs. Whitton from hearing the approach of defendant's engine, she was under the greater obligation to use her eyes. It was her duty to look carefully along the tracks of defendant's railway, both northwardly and southwardly, before attempting to cross them, and it was not sufficient excuse for failing to do so that the day was cold and windy, or that one train had just passed on the track nearer to her.

Statement of the case.

"It was the duty of Mrs. Whitton to look carefully along the tracks of defendant's railway to the north before putting herself in the way of danger, and in time to see and avoid any engine or train approaching from that direction. If necessary, in order to do this, it was her duty to pause before starting to cross until the freight train had so far passed as to give a sufficient view to determine whether she could safely cross; and if she failed to look carefully along these tracks to the north, after the freight train had so far passed as to give her such a view, and in time to have seen and avoided defendant's engine, the plaintiff cannot recover."

The plaintiff asked three instructions, which were refused in the same way.

The questions submitted to the jury were:

"1. Whether Mrs. Whitton's death was caused by the negligence of those who had the management of the train; and,

"2. Was Mrs. Whitton herself guilty of any fault or negligence which contributed to that result."

As to the negligence of the defendant, the court, in substance, instructed the jury that it was the duty of those having the management of the train to cause the bell of the engine to be rung a sufficient time, before crossing Academy Street, to give warning to any passengers on that street desirous of crossing, and to keep it ringing till the tender had crossed the street; and also that it was the duty of those having the management of the train to keep a proper and a vigilant lookout in the direction the train was moving, particularly under the circumstances of the case—a freight train going up one of the tracks in an opposite direction, the train in question just approaching a much frequented street, and a violent southwest wind blowing at the time, and that there was a peculiar vigilance incumbent on those who had the management of the train, to ring their bell and keep a proper lookout, because it was natural, if there were any persons standing at that crossing (a freight train passing along at the time), that they would seek to cross the track after the freight train had gone over the street.

As to the negligence of Mrs. Whitton, the court, in sub-

stance, instructed the jury that she was required to exercise that degree of prudence, care, and caution incumbent on a person possessing ordinary reason and intelligence, under the special circumstances of the case, having regard to the fact of its being a railroad crossing, and another train crossing the street, for which she had to wait in company with Mrs. Woodward, and that she must have used ordinary care, prudence, and caution.

The court declined to say to the jury how she must dispose of her limbs, her eyes, or her ears, but left it to the jury to find whether she had been guilty of any fault or negligence which contributed to her death; and instructed them that if she had, that the plaintiff could not recover, even if the defendant had been guilty of negligence.

The court also told the jury, before they could find a verdict against the defendant, they must be satisfied its employees were guilty of negligence, and that such negligence caused her death.

As to the damages, the court said:

"Those damages have been specified by the statute, but in very general terms:

"'The jury may give such damages, not exceeding $5000, as they shall deem fair and just, in reference to the pecuniary injury resulting from such death, to the relatives of the deceased specified in this section.'

"As we understand, that means that if the plaintiff is entitled to recover at all in this case, he is entitled to recover for damages for such pecuniary injury as has resulted to him from the death of his wife. It is confined by the language of the statute to pecuniary loss, not the loss arising from grief or wounded feelings, or sufferings of any kind, but such pecuniary loss as he has sustained from the death of his wife; it is from her death, not from any loss which he sustained prior to that, but for the pecuniary loss which he has sustained from her death. It is almost impossible to lay down any absolute, fixed rule upon this subject. This question has been recently discussed by the Supreme Court of the United States upon a statute which in this respect is essentially the same as the statute of this State; and the Supreme Court has said that it is a matter largely resting

with the sound reason and discretion of the jury. Taking all the facts and circumstances into consideration, you may consider the personal qualities, the ability to be useful of the party who has met with death, and, of course, also the capacity to earn money. It is not proper for the jury to look upon it simply as a question of feeling or sympathy. The statute does not permit that; all such considerations should be dismissed from your minds. It is a mere matter of dollars and cents—so regarded by the statute—pecuniary injury sustained."

The jury found $5000 for the plaintiff, and a motion for a new trial being refused, after a full consideration of the objections made by the defendants, for which refusal the court gave its reasons fully, the judgment was entered on the verdict. To reverse that judgment the defendant brought the case here.

Mr. T. A. Howe, for the plaintiff in error:

I. *This court never acquired jurisdiction of this case, because it was excluded by the character of the parties.* The suit must be regarded as between a citizen of Illinois, as plaintiff, and citizens of that State and of the State of Wisconsin joined as defendants. Now, in *Ohio and Mississippi Railway Co.* v. *Wheeler*,* a railway company, having like charters from the States of Ohio and Indiana, sued a citizen of the latter State, and this court held that the suit must be regarded as by citizens of Ohio and Indiana against a citizen of the latter State, and hence not within the jurisdiction of the National courts. In *The County of Allegheny* v. *Railway Company*,† Allegheny County, Pennsylvania, sued a railway company which was first chartered by Ohio and afterwards by Pennsylvania. The company presented a petition, alleging itself a corporation of Ohio, and asking a removal of the suit into the United States Circuit Court. The application was denied, because a suit against such a corporation was a suit against citizens of Ohio and Pennsylvania united in business under the shadow of the corporate name, and because, therefore,

* 1 Black, 286.

† 51 Pennsylvania State, 228.

the United States courts had no jurisdiction. The disability must affect both parties alike.

II. *There is no law authorizing the maintenance of this action in any National court.* The right to sue at all in this case exists by the statute of Wisconsin only. But that right is given only on a condition precedent; the condition, namely, that the suit be brought in a Wisconsin court.

It may be argued on the other side that the legislature had no power to confer a conditional right. If this be so, it is one instance where the greater power does not include the lesser. It is a strange proposition which says to the legislatures of the States: "You have the power to confer new absolute rights of action, but when you attempt to create a limited right, to annex a condition to the gratuity you offer, your power is exceeded. The condition is void, and the conditional right becomes an absolute one." The only argument which can be made in support of such a curtailment of legislative power will have to be this: "The Constitution of the United States extends the judicial power to controversies between citizens of different States. This is such a controversy. Congress may, therefore, confer upon the National courts jurisdiction over it and authorize the plaintiff to invoke that jurisdiction, hence this clause, restricting the remedy to the State courts, is unconstitutional and void." But to make this position of value it must appear that the Constitution extends the judicial power to this controversy, or that Congress is authorized to and has extended it to *such* actions. Now the language of the Constitution is peculiar. It says:

"The judicial power shall extend to *all* cases in law and equity arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority; to *all* cases affecting ambassadors; to *all* cases of admiralty and maritime jurisdiction; . . . to controversies . . . between citizens of different States."

It is thus obvious that the Constitution does not extend the judicial power to *all* controversies between citizens of different States.

Argument for the plaintiff in error.

The condition in the Wisconsin statute is not therefore necessarily in conflict with the Constitution. If it be said that this provision commits it to the discretion of Congress, to extend the judicial power to any or all of this class of controversies, and that Congress has extended it to this controversy, the answer is that if such a discretion is vested in Congress, it is not conferred in express terms, nor does the language used justify such an implication. So to construe it, would, in effect, interpolate the word *all* where it has been intentionally omitted.

But if the clause in the Wisconsin statute be invalid, then the whole statute must fall, and of course with it the sole authority for maintaining this action. If the provisions of a statute are so mutually connected with each other as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect, would not pass the residue independently, then if some parts are unconstitutional, all the provisions which are thus dependent, conditional or connected, must fall with them.

A proviso in deeds, or laws, is a limitation or exception to a grant made, or authority conferred, the effect of which is to declare that the one shall not operate, or the other be exercised, unless in the case provided.*

Both the propositions thus stated are well-settled rules.

III. *The act of March 2d, 1867, by authority of which this case was removed from the State court, is unconstitutional and void.*

In *Martin* v. *Hunter*,† where the validity of the 25th section of the Judiciary Act was in question, it was argued at bar, that the right of removal before judgment was undoubted; that it subserved all the reasons suggested in support of the appellate jurisdiction over causes tried in the State courts, and hence that there was no good reason for sustaining such a jurisdiction. But in combating this position Story, J., argued in the most deliberate way that the removal of actions was an exercise of *appellate* jurisdiction; that appellate jurisdiction may be exercised either before or after judgment, and, there-

* Bouvier's Law Dictionary, title "Proviso." † 1 Wheaton, 349.

fore, that the right to remove a case for revision, and the right to remove it for original action upon the subject-matter, rested upon the same foundation, and would stand or fall together. In reasoning to this conclusion he says:

"The power of removal is certainly not in strictness of language an exercise of original jurisdiction; it presupposes jurisdiction to have elsewhere attached."

But it is a misapplication of terms to style that an exercise of appellate jurisdiction which wrenches a case from one court of original concurrent jurisdiction, and takes it into another, for original action upon the subject-matter. Nor has it ever been supposed that the Circuit Courts of the United States have any appellate jurisdiction over the proceedings of State courts. And the reason upon which the theory of Story, J., is founded is as erroneous as the theory itself. He argues that the power of removal is not an exercise of original jurisdiction, because "it presupposes an exercise of original jurisdiction to have elsewhere attached." Take, then, for illustration controversies between citizens of different States. The judicial power of the United States was extended to this class of controversies, for the supposed advantage of such citizens, and hence it is assumed that a defendant in such a controversy had the same right as a plaintiff, to insist that it be tried in the National tribunals. This being so, it follows that the jurisdiction of the State court does not fully attach, until he has waived this right. If he does not waive it, but objects to the proffered jurisdiction of the State court, it never attaches at all, and when the jurisdiction of the National court does attach, it is in strictness an original jurisdiction.

IV. *The evidence of pregnancy was immaterial, and calculated to excite the sympathy and prejudice of the jury, and should have been excluded.*

V. *The charge did not state the law rightly; but should among other things have said that the deceased was bound to use her eyes and ears in the manner stated in the request.*

Mr. J. A. Sleeper, contra.

Mr. Justice FIELD, having stated the case, delivered the opinion of the court as follows:

The jurisdiction of the action by the Federal court is denied on three grounds: the character of the parties as supposed citizens of the same State; the limitation to the State court of the remedy given by the statute of Wisconsin; and the alleged invalidity of the act of Congress of March 2d, 1867, under which the removal from the State court was made.

First, as to the character of the parties. The plaintiff is a citizen of the State of Illinois and the defendant is a corporation created under the laws of Wisconsin. Although a corporation, being an artificial body created by legislative power is not a citizen within several provisions of the Constitution; yet it has been held, and that must now be regarded as settled law, that, where rights of action are to be enforced, it will be considered as a citizen of the State where it was created, within the clause extending the judicial power of the United States to controversies between citizens of different States.* The defendant, therefore, must be regarded for the purposes of this action as a citizen of Wisconsin. But it is said, and here the objection to the jurisdiction arises, that the defendant is also a corporation under the laws of Illinois, and, therefore, is also a citizen of the same State with the plaintiff. The answer to this position is obvious. In Wisconsin the laws of Illinois have no operation. The defendant is a corporation, and as such a citizen of Wisconsin by the laws of that State. It is not *there* a corporation or a citizen of any other State. Being there sued it can only be brought into court as a citizen of that State, whatever its status or citizenship may be elsewhere. Nor is there anything against this view, but, on the contrary, much to support it, in the case of *The Ohio and Mississippi Railroad Company* v. *Wheeler*.† In that case the declaration averred that the plaintiffs were a corporation created by the laws of the States of Indiana and Ohio, and that the defend-

* Paul *v.* Virginia, 8 Wallace, 177.

† 1 Black, 286.

ant was a citizen of Indiana, and the court, after referring to previous decisions, said that it must be regarded as settled that a suit by or against a corporation in its corporate name is a suit by or against citizens of the State which created it, and therefore that case must be treated as a suit in which citizens of Ohio and Indiana were joined as plaintiffs against a citizen of the latter State, and of course could not be maintained in a court of the United States where jurisdiction of the case depended upon the citizenship of the parties. The court also observed that though a corporation by the name and style of the plaintiffs in that case appeared to have been chartered by the States of Ohio and Indiana, clothed with the same capacities and powers, and intended to accomplish the same objects, and was spoken of in the laws of the States as one corporate body, exercising the same powers and fulfilling the same duties in both States, yet it had no legal existence in either State except by the law of that State; that neither State could confer on it a corporate existence in the other nor add to or diminish the powers to be there exercised, and that though composed of and representing under the corporate name the same natural persons, its legal entity, which existed by force of law, could have no existence beyond the territory of the State or sovereignty which brought it into life and endowed it with its faculties and powers.

The correctness of this view is also confirmed by the recent decision of this court in the case of *The Railroad Company* v. *Harris*.* In that case a Maryland railroad corporation was empowered by the legislature of Virginia to construct its road through that State, and by an act of Congress to extend a lateral road into the District of Columbia. By the act of Virginia the company was granted the same rights and privileges in that State which it possessed in Maryland, and it was made subject to similar pains, penalties, and obligations. By the act of Congress the company was authorized to exercise in the District of Columbia the same powers,

* 12 Wallace, 65.

rights, and privileges in the extension and construction of the road, as in the construction and extension of any railroad in Maryland, and was granted the same rights, benefits, and immunities in the use of the road which were provided in its charter, except the right to construct from its road another lateral road. And this court held that these acts did not create a new corporation either in Virginia or the District of Columbia, but only enabled the Maryland corporation to exercise its faculties in that State and District. They did not alter the citizenship of the corporation in Maryland, but only enlarged the sphere of its operations and made it subject to suit in Virginia and in the District. The corporation, said the court, "cannot migrate, but may exercise its authority in a foreign territory upon such conditions as may be prescribed by the law of the place. One of these conditions may be that it shall consent to be sued there. If it do business there it will be presumed to have assented, and will be bound accordingly. For the purposes of Federal jurisdiction it is regarded as if it were a citizen of the State where it was created, and no averment or proof as to the citizenship of its members elsewhere will be permitted."

Second; as to the limitation to the State court of the remedy given by the statute of Wisconsin. That statute, after declaring a liability by a person or a corporation to an action for damages when death ensues from a wrongful act, neglect, or default of such person or corporation, contains a proviso "that such action shall be brought for a death caused in this State, and, in some court established by the constitution and laws of the same." This proviso is considered by the counsel of the defendant as in the nature of a condition, upon a compliance with which the remedy given by the statute can only be enforced.

It is undoubtedly true that the right of action exists only in virtue of the statute, and only in cases where the death was caused within the State. The liability of the party, whether a natural or an artificial person, extends only to cases where, from certain causes, death ensues within the

limits of the State. But when death does thus ensue from any of those causes the relatives of the deceased named in the statute can maintain an action for damages. The liability within the conditions specified extends to all parties through whose wrongful acts, neglect, or default death ensues, and the right of action for damages occasioned thereby is possessed by all persons within the description designated. In all cases, where a general right is thus conferred, it can be enforced in any Federal court within the State having jurisdiction of the parties. It cannot be withdrawn from the cognizance of such Federal court by any provision of State legislation that it shall only be enforced in a State court. The statutes of nearly every State provide for the institution of numerous suits, such as for partition, foreclosure, and the recovery of real property in particular courts and in the counties where the land is situated, yet it never has been pretended that limitations of this character could affect, in any respect, the jurisdiction of the Federal court over such suits where the citizenship of one of the parties was otherwise sufficient. Whenever a general rule as to property or personal rights, or injuries to either, is established by State legislation, its enforcement by a Federal court in a case between proper parties is a matter of course, and the jurisdiction of the court, in such case, is not subject to State limitation.

This doctrine has been asserted in several cases by this court. In *Suydam* v. *Broadnax*,* an act of the legislature of Alabama provided that the estate of a deceased person, declared to be insolvent, should be distributed by the executors or administrators according to the provisions of the act, and that no suit or action should be commenced or sustained against any executor or administrator after the estate had been declared to be insolvent, except in certain cases; but this court held, in a case not thus excepted, that the insolvency of the estate, judicially declared under the act, was not sufficient in law to abate a suit instituted in the Circuit

* 14 Peters, 67.

Court of the United States by a citizen of another State against the representatives of a citizen of Alabama. "The 11th section of the act to establish the judicial courts of the United States," said the court, "carries out the constitutional right of a citizen of one State to sue a citizen of another State in the Circuit Court of the United States, and gives to the Circuit Court 'original cognizance concurrent with the courts of the several States of all suits of a civil nature at common law and in equity,' &c., &c. It was certainly intended to give to suitors, having a right to sue in the Circuit Court, remedies coextensive with these rights. These remedies would not be so if any proceedings under an act of a State legislature, to which a plaintiff was not a party, exempting a person of such State from suit, could be pleaded to abate a suit in the Circuit Court."

In *The Union Bank of Tennessee* v. *Jolly's Administrators*,* this court declared that the law of a State "limiting the remedies of its citizens in its own courts cannot be applied to prevent the citizens of other States from suing in the courts of the United States in that State for the recovery of any property or money there to which they may be legally or equitably entitled." The same doctrine was affirmed in *Hyde* v. *Stone*,† and in *Payne* v. *Hook*.‡

Third; as to the alleged invalidity of the act of March 2d, 1867, under which the removal from the State court was made. The counsel of the defendant, whilst confining his special objection to this act, questions the soundness of the reasoning of Mr. Justice Story, by which any legislation for the removal of causes from a State court to a Federal court is maintained. We may doubt, with counsel, whether such removal before issue or trial can properly be called an exercise of appellate jurisdiction. It may, we think, more properly be regarded as an indirect mode by which the Federal court acquires original jurisdiction of the causes.§ But it is not material whether the reasoning of the distinguished jurist in this par-

* 18 Howard, 506. † 20 Howard, 170. ‡ 7 Wallace, 425

§ Dennistoun *v.* Draper, 5 Blatchford's Cir. Ct. 340.

ticular is correct or otherwise. The validity of such legislation has been uniformly recognized by this court since the passage of the Judiciary Act of 1789.

The judicial power of the United States extends by the Constitution to controversies between citizens of different States as well as to cases arising under the Constitution, treaties, and laws of the United States, and the manner and conditions upon which that power shall be exercised, except as the original or appellate character of the jurisdiction is specially designated in the Constitution, are mere matters of legislative discretion. In some cases, from their character, the judicial power is necessarily exclusive of all State authority; in other cases it may be made so at the option of Congress, or it may be exercised concurrently with that of the States. Such was the opinion of Mr. Justice Story, as expressed in *Martin* v. *Hunter's Lessee*,* and this conclusion was adopted and approved by this court in the recent case of *The Moses Taylor*.† The legislation of Congress has proceeded upon the correctness of this position in the distribution of jurisdiction to the Federal courts. The Judiciary Act of 1789, as observed in the case of *The Moses Taylor*, declares, "that in some cases from their commencement such jurisdiction shall be exclusive; in other cases it determines at what stage of procedure such jurisdiction shall attach, and how long and how far concurrent jurisdiction of the State courts shall be permitted. Thus, cases in which the United States are parties, civil causes of admiralty and maritime jurisdiction, and cases against consuls and vice-consuls, except for certain offences, are placed from their commencement exclusively under the cognizance of the Federal courts. On the other hand, some cases in which an alien or a citizen of another State is made a party may be brought either in a Federal or a State court, at the option of the plaintiff, and if brought in the State court may be prosecuted until the appearance of the defendant, and then

* 1 Wheaton, 334.

† 4 Wallace, 429, decided at the December Term, 1866.

at his option may be suffered to remain there or may be transferred to the jurisdiction of the Federal courts. Other cases, not included under these heads but involving questions under the Constitution, laws, treaties, or authority of the United States, are only drawn within the control of the Federal courts upon appeal or writ of error after final judgment. By subsequent legislation of Congress, and particularly by the legislation of the last four years, many of the cases which by the Judiciary Act could only come under the cognizance of the Federal courts after final judgment in the State courts, may be withdrawn from the concurrent jurisdiction of the latter courts at earlier stages, upon the application of the defendant. The constitutionality of these provisions cannot be seriously questioned and is of frequent recognition by both State and Federal courts."

When the jurisdiction of the Federal court depended upon the citizenship of the parties, the case could not be withdrawn from the State courts after suit commenced until the passage of the act of 1867, except upon the application of the defendant. The provision of the Constitution extending the judicial power of the United States to controversies between citizens of different States had its existence in the impression, that State attachments and State prejudices might affect injuriously the regular administration of justice in the State courts. The protection intended against these influences to non-residents of a State was originally supposed to have been sufficiently secured by giving to the plaintiff in the first instance an election of courts before suit brought; and where the suit was commenced in a State court a like election to the defendant afterwards. The time at which the non-resident party should be allowed thus to make his election was evidently a mere matter of legislative discretion, a simple question of expediency. If Congress has subsequently become satisfied, that where a plaintiff discovers, after suit brought in a State court, that the prejudice and local influence, against which the Constitution intended to guard, are such as are likely to prevent him from obtaining justice, he ought to be permitted to remove his case into a

National court, it is not perceived that any constitutional objection exists to its authorizing the removal, and, of course, to prescribing the conditions upon which the removal shall be allowed.

It follows, from the views we have expressed, that the objection to the jurisdiction of this action by the Circuit Court, upon the grounds advanced by the defendant, cannot be maintained.

It only remains to say a few words upon the refusal of the court to give the instructions prayed by the defendant, and upon its ruling in the admission of certain evidence, and its charge to the jury.

The facts of the case are very few, and with respect to most of them there was little conflict of evidence. [The learned justice here stated the facts of the case, and continued:]

Upon these facts the court gave to the jury a clear and full charge upon the duties and responsibilities of the railroad company in crossing the street of the city, with its engines and trains, and upon the care, prudence, and caution which it was incumbent upon the deceased to exercise in crossing the tracks; and as to the damages which the jury were authorized to find, in case they were satisfied that the employees of the company had been guilty of negligence, and that such negligence had caused the death of the deceased.

The counsel of the plaintiff had requested three special instructions to the jury, and the counsel of the defendant had requested nineteen special instructions. The court, however, declined to give any of them except as they were embraced in its general charge. Some of the instructions prayed by the defendant presented the law respecting the liability of the company correctly, and some of them were based upon an assumed condition of things which the evidence did not warrant. But it is not error for a court to refuse to give an extended series of instructions, even though some of them may be correct in the propositions of law

which they present, if the law arising upon the evidence is given by the court with such fulness as to guide correctly the jury in its findings, as was the case here; nor is a judgment to be set aside because the charge of the court may be open to some verbal criticisms, in particulars considered apart by themselves, which could not when taken with the rest of the charge have misled a jury of ordinary intelligence. The propriety of the rulings of the court in this case is fully vindicated in its opinion on the motion for a new trial.

The evidence of the condition of the deceased—that she was *enceinte* at the time of the accident—could not materially have affected the jury in the estimation of the damages, after the clear and explicit charge of the court, as to the character of the damages which only they were authorized to consider.

The other evidence in the case, to the admission of which objection was taken, was not material, and could not have influenced the result.

JUDGMENT AFFIRMED.

MYERS v. CROFT.

1. When the grantee in a deed is described in a way which is a proper enough description of an incorporated company, capable of holding land, as *ex. gr.*, "The Sulphur Springs *Land* Company," the court, in the absence of any proof whatever to the contrary, will presume that the company was capable in law to take a conveyance of real estate.
2. A grantor not having perfect title who conveys for full value is estopped, both himself and others claiming by subsequent grant from him, against denying title; a perfect title afterwards coming to him.
3. Under the 12th section of the act of September, 1841, "to appropriate the proceeds of the sales of public lands and to grant pre-emption rights"—which section, after prescribing the manner in which the proof of settlement and improvements shall be made before the land is entered, has a provision that "all assignments and transfers of the rights hereby secured, prior to the issuing of the patent, shall be null and void"—a pre-emptor who has entered the land, and who, at the time, is the owner in good faith, and has done nothing inconsistent